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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 403

GEORGE SCHMIDT, PETITIONER

v.

UNITED STATES OF AMERICA AND TUCKER CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The oral opinion of the District Court for the Northern District of Illinois (R. 29-30) is not reported. The opinion of the Court of Appeals for the Seventh Circuit (R. 48-55) is reported at 198 F. 2d 32.

JURISDICTION

The judgment of the Court of Appeals was entered on July 3, 1952 (R. 56). A petition for rehearing was denied August 6, 1952 (R. 71). The

petition for a writ of certiorari was filed on October 21, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an action may be maintained against the United States under the Tort Claims Act on a claim based upon the allegedly malicious conduct of members and employees of the Securities and Exchange Commission in undertaking and publicizing an investigation authorized by law.

STATUTES INVOLVED

The pertinent provisions of the Tort Claims Act, of the Securities Act of 1933, and of the Securities Exchange Act of 1934 are set forth in the Appendix, *infra,* pp. 17-19.

STATEMENT

Petitioner, a stockholder of the Tucker Corporation, instituted suit on March 2, 1951 on behalf of the corporation against the United States under the Tort Claims Act asserting that respondent's employees intentionally (R. 6) inflicted (a) the common law tort of injuring and destroying Tucker's business, and (b) the statutory tort of preventing the sale of its product in interstate commerce in competition with other manufacturers in violation of the anti-trust laws (R. 7).

The complaint alleged (R. 4-6) that in the spring and early summer of 1948 the Tucker Corporation was preparing to produce a new type of automobile for sale in interstate commerce; that the corpora-

tion had then converted most of its cash capital into machinery and equipment, inventory, and advertising in preparation for such production and sale; that it had good business relations with its dealers and distributors, with the firms with which it was doing business, and with the automobile-buying public; that beginning in the spring and early summer of 1948 and extending until after March 3, 1949, the Securities and Exchange Commission and its members and agents acting in concert with other agencies of the United States, or in concert with non-governmental persons or firms, "engaged in a course of conduct" which interfered with, injured and destroyed the corporation's business.

Specifically, the complaint alleged (R. 5) that the course of conduct consisted of the following: (1) that in the spring of 1948 the SEC, knowing that such statement would be broadcast nationwide, as it was, surreptitiously gave out a statement to a radio broadcaster that the Tucker Corporation was about to be investigated for fraud and violations of law in its management and in the conduct of its business; (2) that a few weeks later the SEC commenced and carried forward for many months an investigation of the corporation in the course of which it interfered with the use of the corporate records and files, intimidated certain persons doing business with it, propagated a widespread rumor that the corporation's business was tainted with fraud and illegality and that its managing officers were guilty of fraud and violations of law in the conduct of its business; and (3) that

about the first of March, 1949, a member of the SEC delivered to a representative of a Detroit newspaper its "supposedly secret report" of such investigation to enable him to write an article for such newspaper publicizing the contents of the report, which he did.

The complaint further alleged (R. 7-8) that the corporation was subject to a corporate reorganization proceeding under Chapter X of the Bankruptcy Act; that on February 20, 1951, on behalf of the stockholders of the corporation petitioner advised counsel for the corporation's trustee of the existence of this cause of action, which was in danger of being barred by limitations under the Bankruptcy Act on or about March 3, 1951, requesting him to file suit; and that the trustee's counsel stated that he considered the cause of action to be non-existent and not a corporate asset. The complaint then alleged that this constituted an abandonment of the asset by the trustee; that by letters petitioner so advised the trustee and the court having charge of the reorganization proceeding, requesting to be notified to the contrary if such was not their position, and that there was no response. The complaint also alleged that petitioner thereafter notified certain of the corporation's officers and directors of the matter, demanding that they cause the corporation to sue, but to no avail. Petitioner filed the complaint "as a derivative stockholders' action." (R. 3).

Respondent moved to dismiss the complaint on

four grounds[1] (R. 14-15). The district court, in an oral opinion (R. 29-30), sustained the motion on all the grounds asserted by respondent, stressing in particular its conclusion that the conduct and statements of the SEC were privileged and not actionable. The Court of Appeals for the Seventh Circuit affirmed (R. 48-55), holding that the investigation and the giving out of information concerning it were specifically within the discretionary powers and duties of the SEC under 15 U.S.C. 77t, 78u, and that the claim was therefore barred by the discretionary-function exception of the Tort Claims Act (28 U.S.C. 2680 (a)).

ARGUMENT

Petitioner's claim is based upon an SEC investigation and the release of information incident thereto. He contends that because the SEC allegedly was motivated by an intent to injure his corporation's business, its conduct was tortious and beyond its discretionary authority and hence actionable under the Tort Claims Act. These contentions were rejected by both courts below. The dismissal of the complaint, we submit, was plainly correct, involves no conflict of decisions, and presents no issue calling for review by this Court.

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[1] The grounds for the motion were (1) that the complaint fails to state a claim upon which relief can be granted, (2) under the Tort Claims Act, 28 U.S.C. 2680, the United States withheld consent to be sued upon claims of this nature, (3) petitioner does not have capacity to sue on behalf of the corporation or its stockholders, and (4) the claim was barred by the two-year period of limitations, 28 U.S.C. 2401 (R. 14-15).

1. It is firmly established that public officials are immune from suit for damages arising from the acts done by them in the course of the performance of their official duties. *Spalding* v. *Vilas*, 161 U. S. 483; *Yeselli* v. *Goff*, 275 U. S. 503, affirming 12 F. 2d 396 (C.A. 2). Their conduct is absolutely privileged if it has "more or less connection with the general matters committed by law to [their] control or supervision" (*Spalding, supra*, 161 U.S. at 498). The rule obtains without regard to whether such conduct was motivated by malice, dishonesty or other personal intent unrelated to the public good; public policy requires that public officials "should not be under an apprehension that the motives that control [their] official conduct may, at any time, become the subject of inquiry in a civil suit for damages" (*ibid.*) and that it is "better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." *Gregoire* v. *Biddle*, 177 F. 2d 579, 581 (C.A. 2), certiorari denied, 339 U.S. 949. This principle, foreclosing judicial inquiry into the motives of official conduct, applies not only to superior officers in the government's departments, but to their subordinates as well[2] and has been held applicable to members of the Securities and Exchange Commission. *Jones* v. *Kennedy*, 121 F. 2d 40 (C.A.D.C.), certiorari denied, 314 U.S. 665.

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[2] *Cooper* v. *O'Connor*, 99 F. 2d 135, 142 (C.A. D.C.), certiorari denied, 305 U.S. 643; *Papagianakis* v. *The Samos*, 186 F. 2d 257 (C.A. 4), certiorari denied, 341 U.S. 921.

In the instant case, it must be assumed that the investigation and publicity complained of were initiated and accomplished by the SEC in the course of official duty, despite petitioner's failure to include an affirmative allegation to that effect. See *Smith* v. *Interstate Commerce Commission*, 245 U. S. 33, 46. Otherwise, the Tort Claims Act could not be the basis of the suit.[3] Accordingly, the functions involved being discretionary, the motives of the officials concerned may not be inquired into, since their conduct is absolutely privileged. Their acts may not therefore be the subject of a suit against them individually.[4]

If a person who causes injury is himself free from civil liability, it is obvious that "his employer must also be entitled to a like immunity." *N.O. &*

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[3] Respondent's liability under the Tort Claims Act is limited to claims based upon the wrongful or negligent acts of its employees "while acting within the scope of [their] office or employment." 28 U.S.C. 1346(b).

[4] The records of the court below disclose that there has already been an adjudication that the conduct here complained of was privileged. The investigation resulted in the indictment and trial of certain of the corporation's officers on charges of violating the federal conspiracy and mail fraud statutes and the Securities Act of 1933 (18 U.S.C. (1946 ed.) 88, 338; 15 U.S.C. (1946 ed.) 77q(a)). The defendants were acquitted. Thereupon one of the defendants brought an action against representatives of the SEC and of the Department of Justice and although his complaint sounded in malicious prosecution, its allegations included the very acts which are the subject of petitioner's complaint here. A motion to dismiss was granted, the District Court (Igoe, D.J.) declaring that the officials "are clothed with absolute immunity so far as actions may be brought by individuals contesting the discretion, propriety and manner in which they discharge the same." *Tucker* v. *Kerner*, et al., Civil Nos. 50 C 455 and 50 C 562 (N.D. Ill., May 29, 1950), affirmed, 186 F. 2d 79 (C.A. 7).

N.E. Railroad Co. v. *Jopes,* 142 U.S. 18, 24; *Kendrick* v. *United States,* 82 F. Supp. 430, 432 (N.D. Ala.) Under the Tort Claims Act, respondent assumed the liability for the wrongful and negligent acts or omissions of its employees subject to *respondeat superior* principles. But where the employee is not liable himself because his conduct is privileged, no cause of action exists. For a privileged act does not constitute a tort (*Restatement, Torts,* § 10, Com. a, and see Com. d) and the Tort Claims Act was not intended to create a cause of action where none existed before. *Feres* v. *United States,* 340 U.S. 135, 141, 142. It follows that the complaint fails to state a cause of action upon which relief may be granted. A contrary result would subject public officials to the same hazards and vexations as would be present if they were themselves defendants; their conduct, motives and judgment in the performance of official functions would be the subject of inquiry by both parties to the suit, the plaintiff seeking to impugn them and the United States to defend them.

2. Apart from absolute privilege, and apart also from the fact that petitioner's claim is based upon activities which are peculiarly governmental—activities which cannot be equated to that of a private person as required by the Tort Claims Act (cf. *Feres* v. *United States, supra*)—, the complaint is fatally deficient because the claim falls within the exemptive provisions of the Act, 28 U.S.C. 2680(a), (h), *infra,* pp. 17-18.

(a) The claim is based upon an investigation of the Tucker Corporation by the SEC and the release of information with regard thereto. The purpose of the Securities Acts of 1933 and 1934, as the court below observed (R. 54), is to protect the public against imposition or fraud in the sale of securities in interstate commerce. To that end, the SEC is expressly authorized, "in its discretion", to conduct investigations to determine whether those Acts have been or are about to be violated (Section 20 (a), Securities Act of 1933, 15 U.S.C. 77t(a); Section 21(a), Securities Exchange Act of 1934, 78u (a)), and, "in its discretion, to publish information concerning any such violations" (Section 21 (a), Securities Exchange Act of 1934, 15 U.S.C. 78u (a)). But no action will lie under the Tort Claims Act to recover damages resulting from the performance of discretionary functions, as such claims are barred by the first exception of that Act, 28 U.S.C. 2680 (a). Manifestly, any investigation of a firm by a regulatory agency to determine the presence of fraud or other illegality will interfere with the normal affairs of the firm and will, in all likelihood, be detrimental to its business relations. The paramount interest in protecting the public, however, is the justification for such interference,[5] and it is clear from the legislative history of the Tort Claims Act that Congress intended to preserve

[5] Cf. *Okla. Press Pub. Co.* v. *Walling*, 327 U.S. 186, 213; *Harper* v. *Jones*, 195 F. 2d 705, 707 (C.A. 10), certiorari denied October 13, 1952, No. 104, this Term; *Ainsworth* v. *Barn Ballroom Co.*, 157 F. 2d 97, 101 (C.A. 4).

m suit for damages

the Government's immunity fro

attendant upon such activity.[6]

To escape this result, petiti

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that his complaint really does nc

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of the investigation and the rel

ease of information

by the SEC (compare R. 5), b

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manner in which those acts we

re performed, *viz.*,

that the release of information v

vas "surreptitious"

and that the investigation was

s conducted with a

"corrupt" and "conspiratoria

l" motive (Pet. 5,

15). When publicity is authori

zed by statute, how-

ever, there can be no distinctio

n of actionable sig-

nificance between releasing the

information "sur-

reptitiously" and releasing it

otherwise.[7] Simi-

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[6] This first exception is "designed to preclude application of the bill to a claim against a regulatory agency, such as the * * * Securities and Exchange Commission, based upon an alleged abuse of discretionary authority by an officer or employee, whether or not negligence is alleged to have been involved." H. Rep. No. 1287, 79th Cong., 1st Sess. (1945), pp. 5-6. An earlier tort claims bill (H.R. 5373, Sec. 303(7), 77th Cong., 2d Sess. (1942)) specifically exempted any "claim for damages caused by the administration of any law or laws * * * by the Securities and Exchange Commission." A subsequent bill (H.R. 6463, Sec. 402(1)) deleted this language and substituted the language which now appears in the first exception to the Tort Claims Act (28 U.S.C. 2680(a)). The House Judiciary Committee explained that, "It is not probable that the courts would extend a Tort Claims Act into the realm of the validity of legislation or discretionary administrative action, but H.R. 6463 makes this specific. The general exemption in section 402(1) of H.R. 6463 renders unnecessary the specific exemption of damages caused by the administration of laws by * * * the Securities and Exchange Commission, which appeared in H.R. 5373." Hearings before the House Judiciary Committee on H.R. 5373 and H.R. 6463, 77th Cong., 2d Sess. (1942), p. 29, and see pp. 28, 33, 64-66.

[7] Even without express statutory authority, no action will lie based upon the release of information to the press or to others. *Glass* v. *Ickes*, 117 F. 2d 273 (C.A. D.C.), certiorari

larly, when investigation is warranted by a lawful purpose, "it is not rendered illegal by some other motive in the mind of the officer" (cf. *Isbrandtsen-Moller Co.* v. *United States*, 300 U.S. 139, 145).[8]

Moreover, petitioner's reliance upon the distinction between discretionary and ministerial acts (Pet. 5, 16) has no application to the circumstances of this case. A contention that the functions of a regulatory agency are essentially ministerial (*Smith* v. *Interstate Commerce Commission*, 245 U. S. 33, 38) was early rejected by this Court. The administrative process has often been likened to the judicial process (*United States* v. *Morgan*, 313 U. S. 409, 422; *Melvin* v. *Pence*, 130 F. 2d 423, 426 (C.A.D.C.)) and the investigatory functions of a regulatory agency equated to those of a grand jury (*Okla. Press Pub. Co.* v. *Walling*, 327 U. S. 186, 216; *In re Securities and Exchange Commission*, 84 F. 2d 316 (C.A. 2), reversed as moot, 299 U. S. 504; *Consolidated Mines* v. *Securities and Exchange Commission*, 97 F. 2d 704, 708 (C.A. 9). Both are invested with broad investigative powers.[9]

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denied, 311 U.S. 718; *Jones*, v. *Kennedy*, 121 F. 2d 40 (C.A. D.C.), certiorari denied, 314 U.S. 665; *Mellon* v. *Brewer*, 18 F. 2d 168 (C.A. D.C.), certiorari denied, 275 U.S. 530; *Miles* v. *McGrath*, 4 F. Supp. 603 (D. Md.); *Chatterton* v. *Secretary of State for India*, (1895) 2 Q.B. 189, 191.

[8] See also, *Tenney* v. *Brandhove*, 341 U.S. 367, 377; *Jones* v. *Kennedy*, *supra*; *McMann* v. *Securities and Exchange Commission*, 87 F. 2d 377, 379 (C.A. 2), certiorari denied, 301 U.S. 684.

[9] As to the SEC, see 15 U.S.C. 77t(a), 77s(b), 78u(a); cf. *Wooley* v. *United States*, 97 F. 2d 258, 262 (C.A. 9). As to the grand jury, see *United States* v. *Johnson*, 319 U.S. 503, 510-511.

The conduct and direction of the investigative phase of the administrative process, like its equivalent in the judicial process, are subjects of discretion and judgment of the officials participating;[10] hence they cannot be viewed as ministerial acts. Compare, *Mississippi* v. *Johnson,* 4 Wall. 475, 499. Petitioner's claim is based upon a federal agency's performance of discretionary functions and is squarely within the first exception of the Tort Claims Act. See, *Coates* v. *United States,* 181 F. 2d 816 (C.A. 8); *Cromelin* v. *United States,* 177 F. 2d 275 (C.A. 5), certiorari denied, 339 U. S. 944.

The cases on which petitioner relies (Pet. 4-6), present no conflict. No question relating to discretionary function was raised or discussed in the lower Courts in *Stewart* v. *United States,* 186 F. 2d 627 (C.A. 7), certiorari denied, 341 U. S. 940.[11] In *Costley* v. *United States,* 181 F. 2d 723 (C.A. 5) the discretionary act (admitting a patient into a Government hospital) was spent before the injurious act (negligent treatment thereafter) occurred. In *Oman* v. *United States,* 179 F. 2d 738 (C.A. 10),[12]

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[10] See, *Okla. Press Pub. Co.* v. *Walling, supra,* 327 U.S. at 217, fn. 57; *Crooker* v. *Securities and Exchange Commission,* 161 F. 2d 944, 949 (C.A. 1); 38 C.J.S. p. 1037.

[11] After the denial of certiorari, the United States sought to amend its Answer so as to include the discretionary function exception. A subsequent decision of the Court of Appeals held that the original failure to plead constituted a waiver of this jurisdictional defense. *Stewart* v. *United States,* (C.A. 7, decided September 22, 1952).

[12] On remand, the United States prevailed. See, *Oman* v. *United States,* 195 F. 2d 710 (C.A. 10).

respondent's employees allegedly aided third parties in interfering with plaintiff's exclusive grazing privilege—conduct which had no legal sanction and which in fact was contrary to their affirmative obligation to safeguard such privileges (179 F. 2d at 742)—whereas here the acts complained of were performed under express statutory mandate (15 U.S.C. 77t(a), 78u(a)). Neither *Jones* v. *Securities and Exchange Commission,* 298 U. S. 1, nor *Bank of America N. T. & S. A.* v. *Douglas,* 105 F. 2d 100 (C.A.D.C.) held that erroneous conduct of the SEC gives rise to a suit for damages.

(b) The two torts alleged to have been committed—the injury to the corporation's business and the violation of the anti-trust laws (R. 7)—are not actionable under the Tort Claims Act. The first is an alleged interference with prospective economic advantage, or more particularly, as is evidenced by the complaint (R. 4), an interference with prospective contractual relations. Harper, *Law of Torts* (1933), p. 479; Prosser, *Torts* (1941), pp. 1019, 1020. But Congress, intending that the United States retain its immunity from suits based upon malicious and deliberate torts,[13] expressly excluded from coverage of the Tort Claims Act claims arising out of "interference with contract rights."

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[13] The Act excludes "Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." 28 U.S.C. 2680(h). "This section specifies *types* of claim which would not be covered by the title. * * * These exemptions cover claims arising out of * * * *deliberate torts* * * *." S. Rep. No. 1400,

28 U.S.C. 2680(h). These are not words of art and surely must be construed as including not only interference with contracts already made but also interference with prospective contractual relations. The interest in the security of contracts already made is superior to the interest in securing a probable expectancy (*ibid; Restatement, Torts,* §767, Com. c., § 766, Com. c) and it would be difficult to ascribe to Congress an intent that the United States be liable for disturbing a mere expectation of entering into a contract but not be liable for disturbing the contract itself.[14]

As to the anti-trust laws, it is clear that the United States, not being a "person" within their meaning, is not subject to their provisions in the sense that it may be held to have violated them; nor may it sue or be sued for damages sustained by reason of their violation. *United States* v. *Cooper Corp.,* 312 U. S. 600, 606; see also, *United States* v. *Bressler,* 60 F. Supp. 676, 679 (S.D.N.Y.), affirmed 160 F. 2d 403 (C.A. 2). Moreover, the exclusive remedy for such damages is the remedy prescribed

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79th Cong., 2d Sess. (1946) 33 (emphasis ours). See also, H. Rep. No. 1287, 79th Cong., 1st Sess. (1945), 6. The legislative scheme is further indicated by 28 U.S.C. 2674, barring punitive damages.

[14] Interference with precontractual relations is not as widely recognized a tort as is interference with existing contracts. Harper, *Law of Torts, supra.* Respondent can have no liability under the Tort Claims Act unless a private person, in like circumstances, "would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. 1346(b). Petitioner's complaint has no allegation as to where the allegedly wrongful acts occurred, hence it is not possible to determine whether such conduct would be recognized as tortious.

by such laws, rather than the remedy under the Tort Claims Act.[15]

(c) Moreover, it is apparent on the face of the complaint that petitioner's claim is barred by the two-year period of limitations, 28 U.S.C. 2401. Although the complaint asserts that the course of conduct complained of extended until after March 3, 1949 (R. 4), the accrual of the cause of action is determined by the dates of the specific wrongful acts relied upon, since such acts and dates are petitioner's own particularization of the more general allegation. Cf. *Northern Kentucky Tel. Co.* v. *Southern Bell Co.*, 73 F. 2d 333 (C.A. 6), certiorari denied, 294 U. S. 719. The last act relied upon is the delivery of the SEC investigation report to a newspaper representative on "about the first of March, 1949" (R. 5). The complaint was filed March 2, 1951 (R. 3), just after the statutory period had expired.

3. Finally, even if the complaint states a cause of action, dismissal was proper because petitioner has

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[15] It is well settled that where a statute creates a right and prescribes a remedy, the statutory remedy is exclusive. *Geddes* v. *Anaconda C. M. Co.*, 254 U.S. 590, 593; *A. B. Small Co.* v. *Lamborn & Co.*, 267 U.S. 248, 252. The remedy under the antitrust laws is triple damages (15 U.S.C. 15) and is recognized as punitive in nature. *Johnson* v. *Schlitz Brewing Co.*, 33 F. Supp. 176, 182 (E.D. Tenn.), affirmed 123 F. 2d 1016 (C.A. 6); *United Copper Sec. Co.* v. *Amalgamated Copper Co.*, 232 Fed. 574, 577 (C.A. 2). Compensatory damages, even if consented to by a plaintiff, as petitioner purports to do (R. 7), cannot be substituted for the statutory penalty. *Decorative Stone Co.* v. *Building Trades Council*, 23 F. 2d 426, 428 (C.A. 2), certiorari denied, 277 U.S. 594. The Tort Claims Act bars punitive damages (28 U.S.C. 2674) and was not intended to modify the remedies available under the anti-trust laws.

no standing to maintain the action. The property of the Tucker Corporation, including causes of action, was vested in its trustee (Section 186, Bankruptcy Act, as amended, 52 Stat. 892, 11 U.S.C. 586) and exclusive jurisdiction of the corporation and administration of its estate was vested in the bankruptcy court (Section 111, Bankruptcy Act, as amended, 52 Stat. 884, 11 U.S.C. 511). That court "has exclusive authority to determine how causes of action which have become a part of the bankruptcy estate shall be enforced." *Meyer* v. *Fleming*, 327 U. S. 161, 169. Petitioner, as a shareholder of the bankrupt corporation, had standing to petition the bankruptcy court for instructions requiring the trustee to bring suit, but it is settled law that he could not himself sue on behalf of the trustee or the bankrupt without a formal order of the bankruptcy court permitting him to do so. *Porter* v. *Sabin*, 149 U. S. 473; *Klein* v. *Peter*, 284 Fed. 797 (C.A. 8). Petitioner attempts to avoid this rule by asserting that the trustee's inaction resulted in an abandonment of the cause (R. 7-8). But the local court rule provides that a bankrupt's property may not be abandoned without approval of the court [16] and such approval was neither sought nor obtained.

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[16] Rule 19, Rules in Bankruptcy of the United States District Court for the Northern District of Illinois, provides: "* * * The trustee may, *upon approval by the court*, abandon any property of the bankrupt if burdensome or of no realizable value." (Emphasis ours.)

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APPENDIX

Pertinent portions of the Tort Claims Act [17] read as follows:

28 U.S.C. 1346 (b).

Subject to the provisions of chapter 171 of this title, the district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. 2680.

The provisions of this chapter and section 1346 (b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exer-

[17] The Federal Tort Claims Act (60 Stat. 842, 28 U.S.C. (1946 ed.) 921 *et seq.*) was repealed and its provisions were revised and reenacted into law as 28 U.S.C. (Supp. V) 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671-2680 by the Act of June 25, 1948, effective September 1, 1948, 62 Stat. 869. Existing rights and liabilities were not affected by the repeal (62 Stat. 992).

cising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

* * * * *

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

* * * * *

28 U.S.C. 2401 (b).

A tort claim against the United States shall be forever barred unless action is begun within two years after such claim accrues * * *.

The pertinent portions of the Securities Act of 1933, as amended (48 Stat. 74, 86, 15 U.S.C. 77t (a)) and the Securities Exchange Act of 1934 (48 Stat. 881, 899, 15 U.S.C. 78u(a)), are as follows:

Sec. 20 (a). (Securities Act) Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this title, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or

otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

Sec. 21(a). (Securities Exchange Act) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this title relates.

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